IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/06/2003

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THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

W.P.No.1489 of 2003

1. M.Karunanidhi
2. C.Chinnaian
3. G.Alagiri
4. R.Sampath Kumar
5.P.Murugesan .. Petitioners

-Vs-

1. The Secretary to Government
of Tamil Nadu, Department
of Food and Civil Supplies
Fort St.George, Madras-9.

2. The Chairman & Managing Director
Tamil Nadu Civil Supplies Corporation
Ltd., Thambusamy Road,
Kilpauk, Madras-10. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for the issue of writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.S.Nethaji

For Respondents : Mr.V.Viswanathan
for respondents 2 to 4
Mr.M.S.Palanisamy
Addl. Govt. Pleader for R1

:ORDER

The petitioners who were, admittedly, appointed as Helpers in the respondent-Corporation on temporary basis were terminated by the proceedings of the fourth respondent dated 20.12.2002 due to the closure of DPCs, Kuruvai 2002. Aggrieved by the said order of termination dated 20.12.2002, the petitioners seek a writ of Certiorarified Mandamus to call for the records of the fourth respondent relating to the order dated 20.12.2002 in Rc.A4/3452/2002, quash the same and to consequently direct the respondents to regularise the petitioners' service in the post of Helper and give all monetary and other benefits due to them.

2. It is trite law that it may not be proper for this Court to direct the employer to regularise the service of the temporary employees, particularly when the scheme under which temporary employees were appointed come to an end, activities of the employer is brought down and surplus manpower are identified by the employer, the voluntary retirement scheme is formulated, vide STATE OF H.P. v. ASHWANI KUMAR reported in AIR 1997 SC 352, HAFIQ AHMED & ANR. v. STATE OF RAJASTHAN & ORS. reported in 1999 (9) Supreme 221, and RAMAKRISHNA KAMAT & ORS. v. STATE OF KARNATAKA & ORS. reported in JT 2003 (2) SC 88. In the instant case, the respondents have taken a clear stand that they could not accommodate the petitioners, who are concededly seasonal workers, in a regular post as they have closed the DPCs, Kuruvai, 2002.

3. That apart, the law as to the rights of the temporary employees seeking regularisation is now well settled by the Apex Court in STATE OF H.P. v. ASHWANI KUMAR reported in AIR 1997 SC 352, that the High Court was not right in giving direction to regularise the temporary employees who were engaged only for the project, which was completed and closed due to the non-availability of funds, and that the direction of the High Court to regularise such temporary employees by creating posts and continuing them in spite of non availability of funds and work is absolutely illegal.

4. Again, in HAFIQ AHMED & ANR. v. STATE OF RAJASTHAN & ORS. reported in 1999 (9) Supreme 221, the Apex Court has held that when the posts are created temporarily for fulfilling the needs of a particular project of scheme limited in its duration come to an end on account of the need for the project itself having come to an end either because the project was fulfilled or had to be abandoned wholly or partially for want of funds, the employer cannot by a w rit of Mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose.

5. The Apex Court, in a recent decision RAMAKRISHNA KAMAT & ORS. v. STATE OF KARNATAKA & ORS. reported in JT 2003 (2) SC 88, reiterating the views taken in STATE OF H.P. v. ASHWANI KUMAR reported in AIR 199 7 SC 352, and HAFIQ AHMED & ANR. v. STATE OF RAJASTHAN & ORS. reported in 1999 (9) Supreme 221, held that it may not be proper to regularise the service of the temporary appointees.

6. Applying the ratio laid down by the Apex Court in the case of temporary employees, I am satisfied that the petitioners are not entitled to seek a writ of Mandamus to direct the respondents to regularise his service, as a matter of right, and therefore, the relief sought for by the petitioner cannot be granted, as such an exercise of power by this Court under Article 226 of the Constitution of India, is, time and again, deprecated by the Apex Court.

7. With regard to the other contention of the petitioners that the respondent-Corporation is retaining the juniors of the petitioners, I am

unable to go into this allegation because the petitioners have not given details of any such juniors, much less their seniority when compared to that of their juniors.

For all these reasons, the writ petition fails and the same is dismissed. No costs. Consequently, W.P.M.P.Nos.1853 and 1854 of 2003 are also dismissed.

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Internet : Yes
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